

compared to other steps in determining eligibility, so as to minimize the burden on the agency and the applicant, as long as the discretion is exercised in a nondiscriminatory manner. A benefit granting agency shall verify an applicant's eligibility for a public benefit under this part without regard to the sex, color, race, religion, national origin (except to the extent specifically authorized by Sections 104.1 or 104.62), or disability of the applicant.

#### **§ 104.21 Written declaration of applicant.**

A benefit granting agency shall require from an applicant for a public benefit (other than an exempted Federal public benefit or an exempted State or local public benefit) a declaration in writing, under penalty of law, stating whether the applicant is a national of the United States. If the applicant is an unemancipated minor under 18 years of age or an adult who is not competent to execute the declaration, the written declaration as to the applicant's nationality shall be executed by a parent, legal guardian, or other person legally qualified to act on behalf of the applicant.

#### **§ 104.22 Evidence of alien registration.**

Except as specifically provided by this part, an applicant who has not attested to being a U.S. national of the United States must present to the benefit granting agency the applicant's most recent evidence of alien registration issued by the Service, as listed in Section 264.1(b) of this chapter. An applicant over the age of 14 who has not registered with the Service, or any applicant whose evidence of registration has been lost, mutilated, or destroyed, must contact the Service for the purpose of immediately applying for new evidence of registration pursuant to Section 264.1(c) of this chapter. In that case, the benefit granting agency may accept as temporary evidence of alien registration a Service receipt indicating an application for evidence of registration, as long as the benefit granting agency requires the alien to present the actual evidence of registration when it is received from the Service. In the case of an applicant under the age of 14 who has not registered with the Service, the benefit granting agency may waive the requirement to present evidence of alien registration.

#### **§ 104.23 Evidence of U.S. nationality.**

Except as specifically provided by this part, a benefit granting agency may not make a final determination that an applicant who has attested to being a national of the United States is a

national of the United States until the applicant has presented to the benefit granting agency acceptable evidence of U.S. nationality. This section must be applied equitably and in a nondiscriminatory manner to all applicants. Evidence of U.S. nationality that satisfies the requirement of this section includes the following:

##### **(a) Primary evidence:**

(1) A birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction);

(2) United States passport;

(3) Report of birth abroad of a U.S. citizen (FS-240) (issued by the Department of State to U.S. citizens);

(4) Certificate of Birth (FS-545) (issued by a foreign service post) or Certification of Report of Birth (DS-1350), copies of which are available from the Department of State;

(5) Form N-550 or N-570, Certificate of Naturalization (issued by the Service through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized; the N-570 is a replacement certificate issued when the N-550 has been lost or mutilated or the individual's name has changed);

(6) Form N-560 or N-561, Certificate of Citizenship (issued by the Service to individuals who derive U.S. citizenship through a parent; the N-561 is a replacement certificate issued when the N-560 has been lost or mutilated or the individual's name has changed);

(7) Form I-197, United States Citizen Identification Card (issued by the Service until April 7, 1983 to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings) (formerly Form I-179, last issued in February 1974);

(8) Form I-873 (or prior versions), Northern Marianas Card (issued by the Service to a collectively naturalized U.S. citizen who was born in the Northern Mariana Islands before November 3, 1986);

(9) Statement provided by a U.S. consular official certifying that the individual is a U.S. citizen (given to an individual born outside the United States who derives citizenship through a parent but does not have an FS-240, FS-545, or DS-1350); or

(10) Form I-872 (or prior versions), American Indian Card with a

classification code "KIC" and a statement on the back identifying the bearer as a U.S. citizen (issued by the Service to U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

(b) *Secondary Evidence* (if applicant cannot present primary evidence):

(1) Religious record recorded in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction) within three 3 months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made;

(2) Evidence of civil service employment by the U.S. government before June 1, 1976;

(3) Early school records (preferably from the first school) showing the date of admission to the school, the applicant's date and U.S. place of birth, and the name(s) and place(s) of birth of the applicant's parents(s);

(4) Census record showing name, U.S. nationality or a U.S. place of birth, and applicant's date of birth or age;

(5) Adoption finalization papers showing the applicant's name and place of birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction), or, when the adoption is not finalized and the state or other U.S. jurisdiction listed above will not release a birth certificate prior to final adoption, a statement from a State- or jurisdiction-approved adoption agency showing the applicant's name and place of birth in one of such jurisdictions, and stating that the source of the information is an original birth certificate;

(6) Any other document that establishes a U.S. place of birth or otherwise indicates U.S. nationality (e.g., a contemporaneous hospital record of birth in that hospital in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction);

(7) Evidence of birth in Puerto Rico on or after April 1, 1899 and the applicant's statement that he or she was residing in the United States, a U.S. possession, or Puerto Rico on January 13, 1941;

(8) Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that the applicant did not take an oath of allegiance to Spain;

(9) Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the United States, a U.S. possession, or the U.S. Virgin Islands on February 25, 1927;

(10) The applicant's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the United States, a U.S. possession, or the U.S. Virgin Islands on February 27, 1927, and indicating that the applicant did not make a declaration to maintain Danish citizenship;

(11) Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the United States, a U.S. possession or territory, or the Canal Zone on June 28, 1932;

(12) Evidence of birth in the Northern Mariana Islands, Trust Territory of the Pacific Islands ("TTPI") citizenship, and residence in the Northern Mariana Islands, the United States, or a U.S. territory or possession on November 3, 1986 (Northern Mariana Islands local time), and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time);

(13) Evidence of TTPI citizenship, continuous residence in the Northern Mariana Islands since before November 3, 1981 (Northern Mariana Islands local time), voter registration prior to January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time);

(14) Evidence of continuous domicile in the Northern Mariana Islands since before January 1, 1974, and the applicant's statement that he or she did not enter the Northern Mariana Islands as a nonimmigrant and that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time);

(15) Evidence of the U.S. citizenship of both the applicant's parents, of the relationship of the applicant to the parents, and evidence that at least one parent resided in the United States or an outlying possession prior to the applicant's birth abroad;

(16) Evidence that one parent is a U.S. citizen and the other is a U.S. non-

citizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the United States, a U.S. possession, or American Samoa for a period of at least one 1 year prior to the applicant's birth;

(17) Evidence of the U.S. citizenship of the mother of an applicant born abroad out of wedlock, evidence of the relationship to the applicant, and

(i) For births on or before December 24, 1952, evidence that the mother resided in the United States prior to the applicant's birth; or

(ii) For births after December 24, 1952, evidence that the mother had resided prior to the applicant's birth in the United States or a U.S. possession for a period of at least one 1 year;

(18) A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979, and evidence that at least one parent was a U.S. citizen and employed by the U.S. Government or the Panama Railroad Company or its successor in title; or

(19) Evidence of a female applicant's marriage to a U.S. citizen before September 22, 1922.

(c) *Option to consult agency records.* A benefit granting agency may, in lieu of requiring an applicant to present evidence of U.S. nationality under this section, rely upon records of verified nationality maintained by it, or by a Federal agency responsible for administering a Federal public benefit program, that reasonably establish the applicant's U.S. nationality. This authority includes, but is not limited to, verification of U.S. nationality conducted under an approved computer matching agreement in compliance with the Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100-503, 102 Stat. 2507.

(d) *Option to accept third party declaration.* A benefit granting agency may accept a written declaration made under penalty of law from one or more third parties indicating a reasonable basis for personal knowledge that an applicant who cannot produce evidence of U.S. nationality under this section is a U.S. national of the United States. The benefit granting agency may require the applicant to demonstrate why documentary evidence satisfying paragraphs (a) or (b) of this section does not exist or cannot readily be obtained.

(e) *Option to accept receipt.* A benefit granting agency may accept a receipt for an application for evidence of U.S. nationality (but not a Service receipt for filing a Form N-600 (Application for Certificate of Citizenship) or a Form N-400 (Application for Naturalization)) as

temporary evidence of U.S. nationality, as long as the benefit granting agency requires the applicant to present the actual evidence of U.S. nationality before making a final determination that the applicant is a national of the United States.

#### **§ 104.24 Proof of identity.**

An applicant who presents evidence of U.S. nationality or alien registration that does not contain a photograph or other information describing the applicant (i.e., height, weight, age) that is sufficient to identify that the applicant is the individual to whom the evidence of U.S. nationality or alien registration relates must also present an identification document.

#### **§ 104.25 Standard for accepting documents.**

(a) Documents must be original and unexpired. Certified copies of documents evidencing U.S. nationality are acceptable. The benefit granting agency shall accept documentation presented in compliance with §§ 104.22, and 104.23, and 104.24 and this paragraph (a) that reasonably appears on its face to be genuine and to relate to the applicant.

(b) If the documentation does not reasonably appear on its face to be genuine and to relate to the applicant, the verification shall not proceed further unless and until documentation meeting that standard is produced. If the documentation reasonably appears on its face to be genuine but does not reasonably relate to the applicant, the verification shall not proceed further unless and until documentation meeting that standard is produced.

(c) If documentation that reasonably relates to an applicant who has attested to being a national of the United States but does not reasonably appear to be genuine is produced to a benefit granting agency, the benefit granting agency shall verify the authenticity of the documentation, using available verification assistance from the document issuer (or other qualified source), before accepting it.

(d) If documentation that reasonably relates to an alien applicant but does not reasonably appear on its face to be genuine is produced to a benefit granting agency determining eligibility for a Federal public benefit, or to a benefit granting agency determining eligibility for a State or local public benefit that uses the procedures provided in subpart C, the benefit granting agency shall proceed with the verification using the procedures provided in subpart C (including, as may be directed by the Service under

§ 104.47, any special procedures for suspected fraudulent documentation).

(e) If documentation that reasonably relates to an alien applicant but does not reasonably appear on its face to be genuine is produced to a benefit granting agency determining eligibility for a State or local public benefit that does not use the procedures provided in subpart C, the benefit granting agency shall verify the authenticity of the documentation, using available verification assistance from the document issuer (or other qualified source), before accepting it.

(f) Nothing in this section shall be construed to deny or limit any right of a benefit granting agency to contact the issuer of any document to resolve bona fide questions about its authenticity.

#### **§ 104.26 Retention of information.**

The benefit granting agency must retain a photocopy of the written declaration of the applicant and of all evidence of U.S. nationality or alien registration, and identity presented by the applicant, both front and back, until all verification procedures conducted under this part have been completed and a final decision made as to the applicant's eligibility (including any period of time allowed to appeal or contest the final decision), or for as long as the benefit granting agency retains other documents submitted by the applicant relating to the application for benefits, whichever is longer. A benefit granting agency is not required to retain photocopies if it instead maintains in an accessible electronic format the information relevant to its determination of eligibility for the length of time required by this section.

#### **§ 104.27 Other relevant information.**

The benefit granting agency shall be responsible for determining what information it needs from an alien applicant (in addition to evidence of alien registration and identity) in order to verify the applicant's eligibility for a public benefit under this part, and for requesting that information from the applicant. Depending upon the public benefit, and upon which basis the alien applicant claims to be eligible, that information may include: Full name; date of birth; alien registration number or admission number; social security account number (to the extent authorized by law); immigration status; date of admission or parole into the United States; reason for admission into the United States, if different from present immigration status (*i.e.*, refugee, Amerasian immigrant); date of obtaining present immigration status; immigration status and place of residence on August

22, 1996 or other relevant date; veteran or armed forces duty status; veteran or armed forces duty status of a family member; Native American status; work history in the United States; history of battery or extreme cruelty by or against a family member; whether any person has executed an affidavit of support relating to the applicant, and, if so, the income and resources of that person and of his or her spouse; blindness or disability; and history of receiving public benefits (for example, whether the applicant is receiving Supplemental Security Income on the basis of an application filed before January 1, 1979). Upon request, the Service will assist a benefit granting agency in determining which information will be necessary in order to determine alien applicants' eligibility for the public benefit(s) it administers.

#### **§ 104.28 Reliance upon attestation as temporary evidence of U.S. nationality.**

A benefit granting agency providing a Federal public benefit may rely upon an applicant's attestation in compliance with § 104.21 that the applicant is a national of the United States as an interim basis upon which to grant a public benefit temporarily until the applicant is able to satisfy the requirements of §§ 104.23 and 104.24. A benefit granting agency that relies upon attestations of U.S. nationality to make interim decisions with respect to a public benefit must apply that policy equitably with respect to all applicants for that public benefits making such attestations. A benefit granting agency may, before relying on an attestation as provided in this section, require the applicant to demonstrate why he or she is unable to present evidence satisfying §§ 104.23 and 104.24 at that time.

#### **§ 104.29 Reliance upon alternative procedures for determining U.S. nationality.**

A Federal agency that has promulgated regulations that provide fair and nondiscriminatory procedures for verifying the U.S. nationality of applicants for a Federal public benefit provided by that agency, or by another benefit granting agency subject to those regulations, may continue to use them instead of this part with respect to verification of U.S. nationality upon written request by the Federal agency to the Service, and approval of the request by the Attorney General. Nothing in this section shall be construed to deny, abridge, limit, or adversely affect the validity of any Federal regulation relating to verifying U.S. nationality of applicants for public benefits that a Federal agency has requested to continue to use, other than the Attorney

General's written denial of the request, with reasons provided therefor.

#### **§ 104.30 Eligibility of household.**

A benefit granting agency that receives applications or determines the eligibility of an applicant for a public benefit on the basis of the applicant's household may modify the requirements of Subpart B with respect to that public benefit as follows, as long as the modification is equitably applied to all applicants in a nondiscriminatory manner:

(a) An applicant who is an adult member of a household may execute the written declaration required by § 104.21 on behalf of other members of the household;

(b) An applicant who is an adult member of a household may present the documentation identified in §§ 104.22 or 104.23 on behalf of other members of the household, except that a member of the household who is an alien 18 years of age or over must present his or her alien registration documentation in person; and

(c) the benefit granting agency may waive the requirements of § 104.24 (regarding additional proof of identity) with respect to members of a household whose documentation is presented by another adult member of the household.

#### **§§ 104.31–104.39 [Reserved].**

#### **Subpart C—Systematic Alien Verification for Entitlements (SAVE)**

#### **§ 104.40 SAVE system.**

The Service shall provide and maintain SAVE for the use of benefit granting agencies that are required or authorized to verify that applicants are eligible qualified aliens, nonimmigrants, or aliens paroled into the United States for less than 1 year. The Service may delegate to a contractor technical or other responsibilities for SAVE operation. Benefit granting agencies may use SAVE to the extent required or authorized by §§ 104.2, 104.3, and 104.4

#### **§ 104.41 When to use SAVE.**

A benefit granting agency may not use SAVE to verify an alien applicant's status until it has completed the procedures provided by subpart B with respect to that applicant. The benefit granting agency shall complete the procedures required by subpart C before making a final determination as to benefit eligibility based upon whether the applicant is an eligible qualified alien, or is a nonimmigrant or an alien paroled into the United States for less than 1 year who is eligible for a State or local public benefit. A benefit granting agency may make an interim or